

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 Gun Club Road
West Palm Beach, Florida 33406

IN THE MATTER OF:

Order No. 2000-184-DAO-WS

Declaration of Water Shortage
within portions of the Indian Prairie
Water Use Basin

_____ /

ORDER DECLARING WATER SHORTAGE
WITHIN PORTIONS OF THE INDIAN PRAIRIE WATER USE BASIN

The Governing Board of the South Florida Water Management District, after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order Declaring Water Shortage within portions of the Indian Prairie Water Use Basin pursuant to Chapters 40E-21 and 40E-22, Florida Administrative Code, making the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. The source experiencing the potential concern is surface water in both Lake Istokpoga and the Central and Southern Flood Control Project Canals known as C-39A, C-40, C-41, and C-41A ("Project Canals").
2. The water use basin experiencing concern is known as the Indian Prairie Water Use Basin and is located in all or parts of Glades and Highlands Counties. The affected portion of this Basin is depicted on the attached Exhibit A. Water users within this Basin are generally within the agricultural use class. Irrigation demands are presently high because of the rainfall deficit and increased evapotranspiration rates. Additionally,

exempt, domestic water users withdraw water from surface water bodies within the region.

3. Nearly thirty years ago, in 1974, the District's Governing Board adopted Part I, Chapter 40E-22, F.A.C.; This rule contains a Regional Water Shortage Plan for the subject area. The Lake Istokpoga – Indian Prairie Area Regional Water Shortage Plan, establishes a minimum permissible schedule for Lake Istokpoga and the minimum levels for the various Project canals into which Lake Istokpoga discharges. This Governing Board action was based on a 1974 entitled: "Report on Surface Water Availability in the Lake Istokpoga – Indian Prairie Area." ("Report") The Report does not provide a detailed ecological impact analysis associated with the minimum level recommendations. Apparently, the Lake's ecology was not a determinative factor.
4. The Report's justification for the Lake Istokpoga minimum level focused on recreational boating and aesthetic values in Lake levels. Based on these considerations, the Report states: "...a judgment determination was made setting minimum lake stage at 37.0 ft. msl." (See Report at page 8.) Lake Istokpoga's minimum level varies throughout the year. Generally, the minimum level of Lake Istokpoga rises between late June and mid – October, at which point Lake Istokpoga's minimum level reaches its peak stage of 39.0 ft. After mid-October, Lake Istokpoga's minimum level declines throughout the dry season, reaching its lowest level of 37.0' for the period of late April to late June. Figure 22-2, which is within 40E-

22.072, F.A.C, attached as Exhibit B, depicts the District's Lake Istokpoga minimum level schedule. This Lake schedule slightly differs from the United States Army Corps of Engineer's ("USACOE") Lake regulation schedule.

5. The USACOE regulation schedule for Lake Istokpoga is attached as Exhibit C. The USACOE regulation schedule generally tracks the same pattern as the District's schedule, differing by about six inches higher throughout the year.
6. Chapter 40E-22, F.A.C., also establishes minimum levels for the Project Canals which convey water south of Lake Istokpoga. The 1974 Report notes these stages were established primarily due to concern for " . . . potential detriment . . . [to] the canal section." This concern related to water users withdrawing canal water after supply releases from S-68 are terminated. (See Report, page 23.) The 1974 Report recognized the potential impact such withdrawals may have on the Project Canal cross-sections as well as associated control structures. Thus, the Report recommended adoption of minimum canal levels. If levels drop below the minimum levels, withdrawals are to terminate. Rules 40E-22.072 and 40E-22.122, F.A.C., codify the canal minimum levels and withdrawal termination, respectively. Rule 40E-22.072, F.A.C., also states the minimum levels may be temporarily lowered for environmental or water quality reasons.

7. The canal minimum stages, as compared with the present stages as of December 13, 2000, are as follows:

| <u>Primary Canals:</u> | <u>Min. Stage</u> | <u>Current Stage</u> |
|------------------------------------|-------------------|----------------------|
| Canal 39A above Structure 75 | 22.5 | 25.37 |
| Canal 40 above Structure 72 | 17.7 | 17.61 |
| Canal 41 above Structure 71 | 17.0 | 19.55 |
| Canal 41 above Structure 70 | 22.5 | 25.37 |
| Canal 41A above Structure 84 | 21.7 | 19.96 |
| Canal 41A above Structures 82 & 83 | 29.0 | 30.36 |

8. Recently, an additional source of surface water supply was introduced to the southern portion of the Indian Prairie Basin. In the early 1990's, the District installed two pump stations that provide water from Lake Okeechobee to the southern portions of the Indian Prairie Basin. These pump stations were constructed largely due to the need to provide the Seminole Tribe of Florida with a reliable source of water for meeting its water entitlement rights. Delivery of water from Lake Okeechobee to the southern portion of the Indian Prairie Basin, as depicted on Exhibit A, is presently addressing the southern basin's demands. Thus, the subject basin is divided into northern and southern basins. The northern basin's surface water supply originates from rainfall, runoff, and Lake Istokpoga and is the basin affected by this Order. The southern basin's surface water may be obtained from these sources, in addition to Lake Okeechobee, when necessary.
9. Lake Istokpoga's actual level as of December 13, 2000 was 37.88 ft. Thus, the Lake is 0.62 ft. below the 40E-22, F.A.C., minimum level. Rule 40E-22.122, F.A.C., states that when a minimum level is reached, a

termination of all permitted surface water withdrawals from the Lake or canals shall occur. Additionally, Rule 40E-22.082, F.A.C., states no releases from Lake Istokpoga are to be made via S-68 for the purpose of maintaining canal minimum flows, if the Lake's levels are at or below its minimum.

10. The District closed S-68 on July 11, 2000. This structure has not been opened since that date, except for maintenance operation. Following the existing Lake Istokpoga USACOE Regulation Schedule, discharges from S-68 are not permitted until the stage in the Lake exceeds the minimum regulatory line. (Only minor discharges through S-68 associated with structure maintenance may occur in the absence of a schedule deviation.)
11. Rainfall totals between June through November, 2000 are 20.1 inches, or 32% normal. Without discharges from S-68, rainfall is the primary source of recharge for the Project Canals. Lake Istokpoga's water levels are influenced by both rainfall and inflows from tributary streams. Rainfall data for the Indian Prairie Basin indicates a 9.5 inch deficit. Short and seasonal forecasts by the CPC indicate a persistent below normal rainfall condition in this area for the remainder of the dry season.
12. Historically, a wide range of scenarios have occurred and could be predicted for Lake Istokpoga between now and the end of the dry season. Over the thirty year period of record, the Lake has fallen below its USACOE minimum level approximately five times. The duration of the Lake's level declining below its minimum also varies widely. During

severe drought years, the Lake's level remained below its minimum for approximately 6 months.

13. Variation in the northern Indian Prairie Basin surface water resources is due to the resource's rainfall dependency. Due to the unpredictability of the resource, the present Lake and Project Canal stages, concern for Project Canal and structure integrity, projected drought conditions, permitted water use and projected storage decline, a declaration of water shortage and imposition of the mandatory restrictions contemplated in Chapter 40E-22, F.A.C., is warranted at this time.
14. The water users in these canals generally have no ability to obtain water from other sources, when canals are at these low levels. Only a limited number of users within this region utilize groundwater supplies largely due to poor quality. Complete termination of withdrawals from surface water sources would have the substantial probability of causing economic hardship to water users within the region.
15. It is possible that withdrawal of water from Project Canals and Lake Istokpoga, below the minimum levels stated in Rule 40E-22, F.A.C., would not result in serious harm to the water resources, canal cross sections or the integrity of Project control structures. It is desirable to allow use of water, to the extent possible, without seriously harming the water resources, District Project Canals, or structures.

16. Water users within the affected portion of the Indian Prairie Basin may, in accordance with District rules, seek variances from District water shortage restrictions.
17. Water levels in the Project Canals have the natural tendency to fluctuate in response to rain events, seepage, and runoff into the Project Canals. These fluctuations may represent improvements to the water resources such that the minimum levels are no longer exceeded.
18. District staff shall monitor the Lake levels and Project Canal levels to determine whether limited withdrawals from the surface water bodies which are the subject of this Order would cause serious harm.
19. On December 14, 2000, upon hearing input from interested citizens and water users within the region, the District Governing Board issued a Resolution encouraging an environmental drawdown project for Lake Istokpoga during the dry season of 2000 to 2001. The environmental drawdown project would include United States Army Corps of Engineers ("USACOE") approval of a temporary deviation from Lake Istokpoga's regulation schedule. If authorized, the temporary deviation would allow the District to operate S-68, which has been closed since July 11, 2000. The discharge of water from Lake Istokpoga could enable the Florida Fish and Wildlife Conservation Commission to undertake environmental enhancement activities in the event a Lake drawdown project is implemented. Further, the released water could be utilized for supply purposes.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

20. Section 373.246, Fla. Stat., authorizes the Governing Board to adopt a Water Shortage Plan to regulate the withdrawal and use of water so as to protect the water resources of the District. Chapter 40E-21, F.A.C., is the Water Shortage Plan. Part I of Chapter 40E-22, F.A.C., contains the Lake Istokpoga - Indian Prairie Area Regional Water Shortage Plan.
21. The source experiencing concern is surface water within that portion of the Indian Prairie Basin depicted on Exhibit A. The users within the affected Basin are generally agricultural, although exempt, domestic users also withdraw from surface water bodies within the affected region.
22. Rule 40E-22.122, F.A.C., requires termination of permitted surface water withdrawals from Lake Istokpoga and the Project Canals when their respective levels decline below the minimum levels established in Rule 40E-22.072, F.A.C. Restriction on domestic withdrawals are authorized under Rule 40E-21.231, F.A.C.
23. The District has monitored the condition of the water resources and the needs of the users as required by Rule 40E-21.221, F.A.C.
24. The District has compared current data with historical data and has determined the estimated present and anticipated available water supply within the same class is insufficient to protect the public health, safety or welfare, or the health of animals, fish or aquatic life, a public water supply, or commercial, industrial, agricultural, recreational, or other reasonable-beneficial use as required by Rule 40E-21.221(3), F.A.C.

25. In considering the above findings of fact, the best present option to protect the surface water resources of the Indian Prairie Water Use Basin is a declaration of a water shortage calling for termination of permitted surface water withdrawals from Lake Istokpoga and the Project Canals, within the region depicted on Exhibit A. Additionally, restriction of exempt, domestic withdrawals from Lake Istokpoga is also warranted.
26. Rule 40E-21.275, F.A.C., authorizes issuance of variances from water shortage restrictions, upon application and granting of a variance in accordance with Rule procedures. Due to the possibility that water withdrawals may occur from the surface water bodies which are the subject of this Order; yet not cause serious harm to the water resource, District Project Canals, or structures; issuance of variances from these restrictions may be appropriate. Issuance of such variances must be predicated upon staff monitoring of conditions in Lake Istokpoga, Project Canals, and Project structures and a technical determination that serious harm to the water resource or stated Project components will not occur as a result of withdrawals.
27. Due to the possibility of additional withdrawals not causing harm and recognizing potential for fluctuating water levels in the Project Canals, District staff has composed an Operational Plan which may allow users to withdraw restricted amounts of water during specified times. This Operational Plan is attached as Exhibit D and will be implemented through variance procedures, if requested by water users.

28. Upon hearing input from interested citizens and permitted users within the affected region, the Governing Board passed a Resolution on December 14, 2000 encouraging implementation of the Lake Istokpoga environmental enhancement drawdown project.
29. The Executive Director of the District and all law enforcement authorities and appropriate city and county officials may enforce the Governing Board's regulations and orders adopted pursuant to its legal authority by administrative action, by suit for injunction, by criminal proceedings, or other appropriate action as authorized by Chapter 373, F.S., and by adoption and enforcement of local government ordinances for such purposes.

ORDER

Based upon the above Findings of Fact, Ultimate Facts and Conclusions of Law, the Governing Board orders that:

- A. A water shortage is declared for the surface water users of the northern Indian Prairie Basin as depicted on the attached Exhibit A and described in Rule 40E-21.631(1)(f)1., Fla. Admin. Code, Exhibit E.
- B. All permitted users of surface water within the named Basin are requested to terminate withdrawals from Lake Istokpoga and the Project Canals within the affected portion of the Indian Prairie Basin when such water bodies drop below the minimum levels stated in Rule 40E-22.072, F.A.C., which is attached as Exhibit B. Currently, Lake Istokpoga, C-40 above structure 72 and C-41A above structure 84 are below minimum levels.

Lake and Canal stage information is posted on the District's web site and is available via the District hotline.

- C. As to exempt domestic users withdrawing from Lake Istokpoga or Project Canals within the affected region, a Phase I water shortage is declared and Phase I Moderate Water Shortage Restrictions are imposed. A copy of the Phase I Moderate Water Shortage restrictions in Rule 40E-21.521, F.A.C., is attached as Exhibit F.
- D. A user may request relief from a water shortage order by filing an application for variance in accordance with Rule 40E-21.275, F.A.C., Exhibit G, but must conform to the water use restrictions until the Executive Director grants a temporary variance or the Board grants the variance.
- E. Information regarding this Order is posted on the District's Internet Web Site at www.sfwmd.gov, and will be communicated on a water "user hotline" for persons that do not have access to the internet or have additional questions for District staff. If these modes of communication are inadequate for any affected water user, the District must be immediately notified.
- F. The Governing Board requests that every city and county commission, state and county attorney, sheriff, police officer and other appropriate local government official assist in the implementation and enforcement of this Water Shortage Order. The District staff will cooperate with the local governments in implementing such enforcement measures.

- G. District staff is directed to monitor the condition of the surface water resources within the affected region and Project Canals and structures. If District staff's technical evaluation of the water resources, Project Canals, and Project structures indicates additional withdrawals will not cause harm to these resources, variances authorizing withdrawal of water may be issued. Such variances must be conditioned upon compliance with an operational plan to be developed by staff in light of resource and Project conditions. The operational plan, and any updates thereto, must be communicated to users within the region via the internet and/or telephone hot-line. Initial guidelines for this operational plan are part of this Order and incorporated herein as Exhibit D and will be made available by the District through its website (www.sfwmd.gov), telephone hot-lines and the District's service centers. This Operational Plan shall be adhered to by the users. At no time shall this Order or the Operational Plan be construed to allow an existing legal user to pump or withdraw beyond their permitted average daily rate, as adjusted to the restrictions as set forth in the Operational Plan.
- H. This Order may be amended by action of the Governing Board, or the Executive Director, as appropriate, in order to respond to changed resource conditions, including USACOE approval of a temporary deviation from the Lake Istokpoga regulation schedule.

- I. This Order is a Final Order of the District pursuant to section 120.52(7), F.S., and it is final and effective upon publication as required in §373.246(5), F.S.
- J. This Order shall remain in effect until further modification by the Governing Board or the Executive Director. This Order may be rescinded or modified by the Executive Director, as conditions warrant.

NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1999), requires that “each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply.” Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

Petition for Administrative Proceedings

1. A person whose substantial interests are affected by the South Florida Water Management District’s (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

- a. Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.
- b. Informal Administrative Hearing: If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD

decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

- c. Administrative Complaint and Order: If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.
- d. State Lands Environmental Resource Permit: Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)©), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.
- e. Emergency Authorization and Order: A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.
- f. Order for Emergency Action: A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.
- g. Permit Suspension, Revocation, Annulment, and Withdrawal: If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15th Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (LAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with LAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with LAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

MEDIATION

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

- (1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;
- (2) a statement of the preliminary agency action;
- (3) an explanation of how the person's substantial interests will be affected by the agency determination; and
- (4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have

concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

- (a) the caption shall read:
Petition for (Variance from) or (Waiver of) Rule (Citation)
- (b) The name, address, telephone number and any facsimile number of the petitioner;
- (c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);
- (d) the applicable rule or portion of the rule;
- (e) the citation to the statute the rule is implementing;
- (f) the type of action requested;
- (g) the specific facts that demonstrate a substantial hardship or violation of principles of fairness that would justify a waiver or variance for the petitioner;
- (h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and
- (i) a statement of whether the variance or waiver is permanent or temporary, If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

- a) the specific facts that make the situation an emergency; and
- b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

INITIATION OF PROCEEDINGS (INVOLVING DISPUTED ISSUES OF MATERIAL FACT) (28-106.201, F.A.C.)

(2) All petitions filed under these rules shall contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;

- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- (f) A demand for relief.

INITIATION OF PROCEEDINGS (NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT) (28-106.301, F.A.C.)

(2) All petitions filed under these rules shall contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- (e) A demand for relief.

SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL (28-107.04, F.A.C.)

(3) Requests for hearing filed in accordance with this rule shall include:

- (a) The name and address of the party making the request, for purposes of service;
- (b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
- (c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217 (42-2.013, F.A.C.)

- (1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.
- (2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity.

How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;

How the rule or order sought to be reviewed affects the interests of the party seeking review;

The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;

If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and

The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

EMERGENCY ACTION (28-107.005, F.A.C.)

- (2) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.

- (3) The 14-day notice requirement of Section 120.569(2)(b), F. S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.
- (4) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57. and 120.60, F.S.

EMERGENCY ACTION (40E-1.611, F.A.C.)

- (1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.
- (2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

DONE AND SO ORDERED at West Palm Beach, Palm Beach County,

Florida, on this 14th day of December, 2000.

ATTEST

ON

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

BY:

MICHAEL COLLINS
Chairman

LEGAL FORM APPROVED:

BY: _____
Elizabeth Ross
Sr. Attorney

FILED WITH THE CLERK OF THE SOUTH

FLORIDA WATER MANAGEMENT DISTRICT

BY: _____

ON: _____

Northern Indian Prairie Basin Water Shortage Operational Plan

In the event: (1) staff determines withdrawal of water from surface water bodies which are the subject of this order will not be seriously harmed by additional withdrawals or (2) Project Canals described herein rise above the minimum levels stated in Rule 40E-22.072, F.A.C., while under a water shortage order, the District may allow pumping withdrawals at rates specified in variance authorizations.

An operational plan, based upon available freeboard above the minimum levels (if any), structural integrity, canal side slope stability, and health and safety, will be communicated to users in the affected Basin.

Beginning on December 22, 2000 the hotline listed below will be activated and information regarding pumpage will be available for variance holders. Each morning, the water level will be assessed prior to 0600. A decision will be communicated to water users by e-mail and / or other automatic dialing messages. A call-in hotline will have daily notices recorded for water users without network connections. The statement will also be placed on the District's water shortage web site. Pumping will either be prohibited for that day, or if water volume sufficient for pumping is available, pumping will be allowed until noon or until canal levels once again recede to the minimum levels. Such pumping, must occur in accordance with variance conditions.

A cease pumping notice will be broadcast after a specified duration or, in the event levels are above minimums, when the canal levels drop to their minimum levels.

The District would like to thank the water users within the Northern Indian Prairie Water Use Basin for their assistance in the communication process during this water shortage.

Water Shortage Web Site

www.sfwmd.gov

Water Shortage Hotline for Indian Prairie Basin Canal Level Information:

1-800-544-2323